

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE:	)	
	)	
ZENA DENISE CRENSHAW LOGAL,	)	CASE NO. 05-67947 JPK
	)	Chapter 7
Debtor.	)	
*****	)	
ZENA DENISE CRENSHAW LOGAL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY NO. 06-6045
	)	
GREAT LAKES HIGHER EDUCATION	)	
GUARANTY CORP, STATE OF INDIANA,	)	
SUPREME COURT OF INDIANA, and	)	
EDUCATIONAL CREDIT MANAGEMENT	)	
CORPORATION,	)	
	)	
Defendants.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Intervenor.	)	

ORDER DETERMINING DISCOVERY DISPUTE

On October 12, 2009, Educational Credit Management Corporation ("ECMC"), by counsel, filed a "Verified Motion to Set Matter for Hearing". The motion presented a discovery dispute to the court in relation to the partial objection of the plaintiff Zena Denise Crenshaw Logal to Request No. 2 in a request for production of documents submitted by ECMC to Logal, and an objection by Logal to Interrogatory No. 10 in a set of interrogatories submitted by ECMC to the plaintiff. A hearing with respect to the dispute was held on November 13, 2009; ECMC appeared by counsel Stacia L. Yoong; the plaintiff Zena Denise Crenshaw Logal appeared personally. Arguments were submitted, and authorities were cited by each party in support of their respective positions.

Logal's objection is that each of the discovery requests seeks to obtain information or

documentation concerning financial matters relating to her husband. She contends that these requests are outside the scope of discover provided for by Fed.R.Bankr.P. 7026/Fed.R.Civ.P.

26(b)(1), which provides in pertinent part as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense – including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

ECMC asserts that the information is relevant with respect to matters relating to Logal's assertions of dischargeability of indebtedness which she owes to the defendant, under 11 U.S.C. § 523(a)(8), on the grounds that excepting that debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

Request No. 2 states the following:

2. All Documents which constitute, memorialize, or evidence the financial status (income, expenses, assets and liabilities) of the Plaintiff (*and the Plaintiff's spouse*) during the past five years. Such Documents shall include, but not be limited to, accounting books and records, federal and state tax returns, financial statements, audits and any and all other financial records or reports of whatever description reflecting any party of the Plaintiff's (*and the Plaintiff's spouse*) income, expenses, assets and liabilities.

Interrogatory No. 10 states the following:

INTERROGATORY NO. 10: Identify whether anyone other than Plaintiff lives in Plaintiff's household. For each, provide the following:

- A. Name of each person.
- B. Age of such person(s).
- C. The annual amount of all income of such person(s), and the source of all income.
- D. The amount such person(s) pays for rent to Plaintiff or to others or contributes to the payment of household expenses.

In support of ECMC's position, Attorney Yoon principally cited the case of *In re White*, 243 B.R. 498, 509 (Bankr. N.D.Ala. 1999), in which the following is stated:

"[C]ourts have routinely considered the income of a debtor's spouse when determining whether the debtor's household income and expenses are in such a dire condition that a discharge of student loans is warranted." *Mitchell v. United States Department of Education (In re Mitchell)*, 210 B.R. 105, 108 (Bankr.N.D.Ohio 1996), *citing Ipsen v. Higher Educ. Assistance Foundation (In re Ipsen)*, 149 B.R. 583 (Bankr.W.D.Mo.1992), *citing In re Velis*, 123 B.R. 497, 512 (D.N.J.1991). In fact, the vast majority of the reported opinions in which the dischargeability of a student loan debt owed by a married debtor was at issue, the courts have considered the earnings of both the debtor and his or her spouse for the purpose of evaluating the quality of the debtor's lifestyle.<sup>FN9</sup> (Omitted footnote 9 is a lengthy list of cases cited by the court in *In re White* in support of the foregoing statements.)

At the November 13 hearing, Attorney Yoon also provided the court with an additional shorter list of cases, comprised of cases decided by United States Courts of Appeal.<sup>1</sup>

At the hearing, Logal provided the court with citations to four cases which she deems supportive of her position: *In re Swinney*, 266 B.R. 800 (Bankr. N.D.Ohio 2001); *In re Berndt*, 127 B.R. 222 (Bankr. D.N.Dak. 1991); *In re Halverson*, 401 B.R. 378 (Bankr. N.Minn. 2009); and the concurring opinion of Judge Bright in *In re Reynolds*, 425 F.3d 526 (8<sup>th</sup> Cir. 2005).

Having reviewed the authorities submitted by the parties, the court sides with ECMC. In determining the issue of undue hardship under 11 U.S.C. § 523(a)(8), it is appropriate to consider the totality of circumstances in relation to the manner in which the debtor may be able to provide for ordinary living expenses. Moreover, the manner in which a debtor's living circumstance is impacted by the ability of a non-obligated party to defray certain expenses in relation to the debtor's and the non-party's living arrangements for payment of those expenses

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<sup>1</sup> On December 2, 2009, ECMC filed a document entitled "Notice of Case Law", citing to the case of *O'Hearn v. Educational Credit Management Corp.*, 339 F.3d 559 (7<sup>th</sup> Cir. 2003). Apart from the fact that this document was submitted after the close of the hearing, the court is unable to ascertain anything of relevance in the case.

is relevant. Thus, matters relating to the income of the non-debtor spouse is relevant to determining the totality of circumstances in which the debtor might find himself/herself in relation to repayment of a student loan obligation subject to 11 U.S.C. § 523(a)(8). In fact, the cases cited by Logal stand for this proposition. In the concurring opinion of Judge Bright in *In re Reynolds*, the following is stated:

While it is true that the income and expenses of husband and wife are combined for the purpose of examining a household's finances, it does not seem proper, in the circumstances where the debtor and non-debtor spouse have contributed about equally to the family income and expenses, to attribute the entire surplus to the debtor in favor of the debtor's creditors. (emphasis supplied)

425 F.3d 526, 535-536. The income of the non-debtor spouse is thus relevant to issues under § 523(a)(8).

In *In re Halverson*, 401 B.R. 378, 386, the following is stated:

Generally, a spouse's income may be considered in the undue hardship analysis. *Cumberworth* at 657. However, a spouse's income is considered not to increase a debtor's gross income but rather to the extent that it decreases his monthly expenses. It would be unfair to expect her to either pay all of Halverson's personal expenses just so he can make payments on a loan he incurred years before the marriage, or to pay those loans for him. See, e.g., *Reynolds v. Pa. Higher Educ. Assistance Agency (In re Reynolds)*, 425 F.3d 526, 535-36 (8<sup>th</sup> Cir.2005) (Bright, J., concurring) ("While it is true that the income and expenses of husband and wife are combined for the purpose of examining a household's finances, it does not seem proper, in the circumstances where the debtor and non-debtor spouse have contributed about equally to the family income and expenses, to attribute the entire surplus to the debtor in favor of the debtor's creditors."). "[S]pousal income should not be made liable for debts incurred by the debtor." *In re Berndt*, 127 B.R. 222, 224-25 (Bankr.D.N.D.1991). As a result, Mary's personal expenses, including her tithing, are not even relevant to the discussion; she is free to dispose of her income as she sees fit. While in the past Wolter paid Halverson's health insurance premiums, now that Halverson is on Medicare he pays his own healthcare expenses. Wolter is not currently reducing Halverson's expenses except to the extent of paying her equal portion of the shared household expenses established at trial and her income should not be attributed to Halverson beyond that contribution. (emphasis

supplied)

Thus, a spouse's income is relevant to issues under 11 U.S.C. § 523(a)(8).

In *In re Berndt*, 127 B.R. 222, 224-225, the following was stated:

The Debtor's wife is not a co-debtor in this case and, as the Debtor correctly points out, spousal income should not be made liable for debts incurred by the Debtor. As husband and wife, however, the Debtor and his non-joining spouse maintain a joint household and most of their living expenses are, as is typical, incurred in that fashion without segregation or regard as to which spouse consumed the benefit. Home mortgage, maintenance, utilities, taxes, transportation, insurance and other daily living expenses are of the type normally borne by both spouses living under one roof. Hence, in calculating whether there is discretionary income available to fund a plan one must, of necessity, observe to what degree a debtor's daily living expenses are shared as co-obligations of the non-debtor spouse or are assumed completely by that spouse. The effect of this factor renders a considerable portion of the Debtor's income in this case discretionary and available for funding of a plan. To be clear, the non-debtor spouse's income is not being rendered liable for the debts of the Debtor but rather is simply being considered in determining whether the Debtor himself has available discretionary income by virtue of the fact that he and the non-debtor spouse share a joint household. (emphasis supplied)

Thus, the discovery requests are relevant to issues arising under 11 U.S.C. § 523(a)(8).

Finally, in *In re Swinney*, 266 B.R. 800, 803, the following was stated:

As for how her mental conditions have specifically affected her ability to pay her student loan obligations, the Debtor related to the Court that it has been difficult, if not impossible for her to maintain any sort of permanent employment. By way of a specific example, the Debtor testified that she has not received any employment income for the past eighteen (18) months, a situation which the Debtor does not foresee changing in the near future. To support herself, testimony was given to the effect that the Debtor relies on the help of two (2) individuals who provide financial support; the amount of this help ranges from One Thousand dollars (\$1,000.00) to One Thousand Five Hundred dollars (\$1,500.00) per month.

This passage indicates that the court did not exclude evidence of other persons providing financial support to the debtor in relation to issues under 11 U.S.C. § 523(a)(8).

The court determines that the information and documentation requested by Interrogatory No. 10 and by Request for Production No. 2 to which the plaintiff objected are within the scope of discovery as delineated by Fed.R.Bankr.P. 7026/Fed.R.Civ.P. 26(b)(1).

IT IS ORDERED that the objections of Zena Denise Crenshaw Logal to Interrogatory No. 10 and Request for Production No. 2 submitted to her by Educational Credit Management Corporation are overruled.

IT IS FURTHER ORDERED that Zena Denise Crenshaw Logal shall respond to those discovery requests in the manner required by applicable law and applicable rules within 30 days of the date of entry of this order.

Dated at Hammond, Indiana on January 7, 2010.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Zena Denise Crenshaw Logal  
Stacia L. Yoon